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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Kimling Atherley

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Write the full name of each plaintiff.

\_\_\_\_ CV \_\_\_\_  
(Include case number if one has been assigned)

-against-

New York City Department of Education; and Colin

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Do you want a jury trial?

☒ Yes ☐ No

Caldwell, Reassigned Teacher Supervisor

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Write the full name of each defendant. The names listed above must be identical to those contained in Section I.

**EMPLOYMENT DISCRIMINATION COMPLAINT**

**NOTICE**

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

**I. PARTIES****A. Plaintiff Information**

Provide the following information for each plaintiff named in the complaint. Attach additional pages if needed.

<b>Kimling</b>	<b>C</b>	<b>Atherley</b>
First Name	Middle Initial	Last Name
<b>1322 Maple Terrace</b>		
Street Address		
<b>Union, Rahway</b>	<b>NJ</b>	<b>07065</b>
County, City	State	Zip Code
<b>(347) 512-4944</b>	<b>katherley69@gmail.com</b>	
Telephone Number	Email Address (if available)	

**B. Defendant Information**

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. (Proper defendants under employment discrimination statutes are usually employers, labor organizations, or employment agencies.) Attach additional pages if needed.

Defendant 1:	<b>New York City Department of Education c/o Corporation Counsel</b>		
	Name		
	for the City of New York - 100 Church Street		
	Address where defendant may be served		
	<b>New York, New York</b>	<b>NY</b>	<b>10007</b>
	County, City	State	Zip Code
Defendant 2:	<b>Colin Caldwell, Reassigned Teacher Supervisor</b>		
	Name		
	<b>100 Gold Street Fl. 4</b>		
	Address where defendant may be served		
	<b>New York, New York</b>	<b>NY</b>	<b>10038</b>
	County, City	State	Zip Code

Defendant 3:

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Name

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Address where defendant may be served

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County, City

State

Zip Code

## II. PLACE OF EMPLOYMENT

The address at which I was employed or sought employment by the defendant(s) is:  
**New York City Department of Education/ MS 301**

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Name

**131 Livingston Street/ 31 New York Avenue**

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Address

**Kings, Brooklyn**

**NY**

**11201/11216**

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County, City

State

Zip Code

## III. CAUSE OF ACTION

### A. Federal Claims

This employment discrimination lawsuit is brought under (check only the options below that apply in your case):

- ☒ **Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, for employment discrimination on the basis of race, color, religion, sex, or national origin**

The defendant discriminated against me because of my (check only those that apply and explain):

- ☒ race: African American
- ☐ color: \_\_\_\_\_
- ☐ religion: \_\_\_\_\_
- ☐ sex: \_\_\_\_\_
- ☐ national origin: \_\_\_\_\_

- ☐ **42 U.S.C. § 1981**, for intentional employment discrimination on the basis of race

My race is: \_\_\_\_\_

- ☐ **Age Discrimination in Employment Act of 1967**, 29 U.S.C. §§ 621 to 634, for employment discrimination on the basis of age (40 or older)

I was born in the year: \_\_\_\_\_

- ☒ **Rehabilitation Act of 1973**, 29 U.S.C. §§ 701 to 796, for employment discrimination on the basis of a disability by an employer that constitutes a program or activity receiving federal financial assistance

My disability or perceived disability is: Asthma and Arthritis

- ☒ **Americans with Disabilities Act of 1990**, 42 U.S.C. §§ 12101 to 12213, for employment discrimination on the basis of a disability

My disability or perceived disability is: Asthma and Arthritis

- ☐ **Family and Medical Leave Act of 1993**, 29 U.S.C. §§ 2601 to 2654, for employment discrimination on the basis of leave for qualified medical or family reasons

## B. Other Claims

In addition to my federal claims listed above, I assert claims under:

- ☒ **New York State Human Rights Law**, N.Y. Exec. Law §§ 290 to 297, for employment discrimination on the basis of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status
- ☒ **New York City Human Rights Law**, N.Y. City Admin. Code §§ 8-101 to 131, for employment discrimination on the basis of actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation, alienage, citizenship status
- ☐ Other (may include other relevant federal, state, city, or county law):

\_\_\_\_\_

#### IV. STATEMENT OF CLAIM

##### A. Adverse Employment Action

The defendant or defendants in this case took the following adverse employment actions against me (check only those that apply):

- ☐ did not hire me
- ☐ terminated my employment
- ☐ did not promote me
- ☒ did not accommodate my disability
- ☒ provided me with terms and conditions of employment different from those of similar employees
- ☒ retaliated against me
- ☐ harassed me or created a hostile work environment
- ☒ other (specify): Brought 3020-a Charges against me. Denied per session  
and after school opportunities

##### B. Facts

State here the facts that support your claim. Attach additional pages if needed. You should explain what actions defendants took (or failed to take) *because of* your protected characteristic, such as your race, disability, age, or religion. Include times and locations, if possible. State whether defendants are continuing to commit these acts against you.

Please see attached addendum.

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As additional support for your claim, you may attach any charge of discrimination that you filed with the U.S. Equal Employment Opportunity Commission, the New York State Division of Human Rights, the New York City Commission on Human Rights, or any other government agency.

## V. ADMINISTRATIVE PROCEDURES

For most claims under the federal employment discrimination statutes, before filing a lawsuit, you must first file a charge with the U.S. Equal Employment Opportunity Commission (EEOC) and receive a Notice of Right to Sue.

Did you file a charge of discrimination against the defendant(s) with the EEOC or any other government agency?

☒ Yes (Please attach a copy of the charge to this complaint.)

When did you file your charge? 4/28/2022

☐ No

Have you received a Notice of Right to Sue from the EEOC?

☒ Yes (Please attach a copy of the Notice of Right to Sue.)

What is the date on the Notice? 11/02/2022

When did you receive the Notice? 11/6/2022

☐ No

## VI. RELIEF

The relief I want the court to order is (check only those that apply):

☐ direct the defendant to hire me

☐ direct the defendant to re-employ me

☐ direct the defendant to promote me

☐ direct the defendant to reasonably accommodate my religion

☒ direct the defendant to reasonably accommodate my disability

☒ direct the defendant to (specify) (if you believe you are entitled to money damages, explain that here)

Drop the 3020-a charges; compensate me for lost pensionable income (per

session and after school opportunities) and emotional distress damages.

**VII. PLAINTIFF'S CERTIFICATION**

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

<u>12/7/2022</u>		<u>s/ Kimling Atherley</u>	
Dated		Plaintiff's Signature	
<u>Kimling</u>	<u>C</u>	<u>Atherley</u>	
First Name	Middle Initial	Last Name	
<u>1322 Maple Terrace</u>			
Street Address			
<u>Union, Rahway</u>		<u>NJ</u>	<u>07065</u>
County, City		State	Zip Code
<u>(347) 512-4944</u>		<u>katherley69@gmail.com</u>	
Telephone Number		Email Address (if available)	

I have read the attached Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☐ Yes    ☒ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.

**Addendum to Federal Complaint for Kimling Atherley @ 12/7/2022**

1. I have been employed as a common branch teacher with the New York City Department of Education (“NYCDOE”) for nearly 25 years, beginning in 1998.
2. I believe I have been the subject of age and race and disability discrimination.
3. I am presently 53 years of age and of the black race. I also suffer from disabilities based on asthma and arthritis.
4. I worked as a teacher at MS 301 in Brooklyn for about 19 years until April 19, 2019, at which point I was served 3020-a charges and was reassigned, until January 7, 2022, when I was returned to my duties at MS 301. At the time of my reassignment, my principal was Acting Principal Troutman and Assistant Principal Hazelwood.
5. I was the UFT chapter leader at the school for approximately 7 years at the time I was reassigned from my duties. During my time as UFT chapter leader, I spoke up for colleagues suffering race discrimination and retaliation on behalf of a Native American teacher and have been retaliated as a result of speaking up on abuse on a student with disabilities and about racial discrimination, and helped file grievances on their behalf.
6. I was initially reassigned to 131 Livingston Street from April 2018 until December 16, 2019, when I was reassigned to 65 Court Street by OPI manager Colin Caldwell. I objected to that assignment based on the need for reasonable accommodations due to my arthritis disabilities. Mr. Caldwell failed to accommodate my disabilities.
7. Prior to being reassigned from MS 301 in 2018, I received reasonable accommodations due to my arthritis.



8. On or about February 7, 2020, I filed a UFT grievance against OPI manager Colin Caldwell for discrimination and retaliation and failing to accommodate my disabilities, when he started docking time from my CAR balance.
9. At the beginning of the COVID-19 pandemic another reassigned teacher and myself both contracted COVID-19 while reassigned to 65 Court Street. I believe that I contracted Covid at 65 Court Street due to poor health and safety conditions at the facility, including poor ventilation.
10. After the COVID-19 pandemic started in March 2020, I called remotely each day and had no issues, until I was told to return to 65 Court Street in Brooklyn in September 2021. I was the only person reassigned back to 65 Court Street, while all other reassigned teachers were allowed to return to 131 Livingston Street.
11. I believe Colin Caldwell has retaliated against me by refusing to reassign me back to 131 Livingston Street after I complained about the health and safety conditions at 65 Court Street. In fact, a Caucasian teacher that was also reassigned to 65 Court Street asked for a reasonable accommodation to be transferred back to 131 Livingston and her request was granted while my request was denied.
12. I received my Section 3020-a decision on January 5, 2022, issuing me a small fine and returning to me my duties at MS 301.
13. I received a disciplinary non file letter from the Superintendent, dated February 2, 2022 and received February 7, 2022, with allegations by OPI Colin Cadlwell that I changed my reassigned location without his permission. The location I had been assigned to was unsafe for health and safety reasons, as I had told him several times, and he did not timely respond

to my complaints about the lack of safety at that location. Four other Caucasian teachers were not assigned to 65 Court Street.

14. On February 3, 2022, I was reassigned back to my teaching duties at MS 301 effective February 6, 2022.

15. On February 14, 2022, I filed a disability and racial discrimination complaint with the NYCDOE's OEO office against DOE OPI manager Colin Caldwell.

16. On April 27, 2022, I received a letter suspending me from my duties effective April 28, 2022. I was removed from my teaching duties for one school day and then was sent back to MS 301 to continue my teaching duties.

17. I believe I have been discriminated and retaliated against by OPI manager Colin Caldwell and the DOE based on failure to reasonably accommodate my disabilities and failure to address my safety and health concerns at 65 Court Street, and by retaliating against me for complaining about my disabilities and health and safety concerns not being accommodated, and treating me differently by accommodating similarly situated reassigned Caucasian teachers by allowing them to return to 131 Livingston Street after teachers returned from the pandemic.

18. I believe I have suffered additional retaliation since I filed the SDHR complaint on April 28, 2022.

19. I received Section 3020-a charges on May 5, 2022, while teaching at MS 301.

20. I have continued teaching with a full teaching program at MS 301 for the 2022-23 school year.

21. Because of my pending Section 3020-a charges and the associated problem code, I am prohibited from and unable to do per session and after school pensionable opportunities,

including proctoring, test grading, and professional development opportunities. I proctored a test last spring and was told I could not get paid because of the problem code, and I continue to be excluded from valuable pensionable opportunities as I near my retirement age.





## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

New York District Office  
33 Whitehall St, 5th Floor  
New York, NY 10004  
(929) 506-5270  
Website: [www.eeoc.gov](http://www.eeoc.gov)

### DISMISSAL AND NOTICE OF RIGHTS

(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 11/02/2022

To: Kimling Atherley  
1322 Maple Terrace  
Rahway, NJ 07065

Charge No: 16G-2022-01983

EEOC Representative and email: Holly Shabazz  
S/L Program Manager  
HOLLY.SHABAZZ@EEOC.GOV

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### DISMISSAL OF CHARGE

The EEOC is closing this charge because: Charging Party wishes to pursue matter in Federal District Court.

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated your charge.

### NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge *will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)*

*If you file suit, based on this charge, please send a copy of your court complaint to this office.*

On behalf of the Commission,

Digitally Signed By: Timothy Riera  
11/02/2022

Timothy Riera  
Acting District Director



## New York State Division of Human Rights

## Employment Complaint Form

Although workers, interns and volunteers of all ages are protected, you must be 18 years or older to file a complaint. A parent, guardian or other person having legal authority to act in the minor's interests must file on behalf of a person under the age of 18.

<b>1. Your contact information:</b>											
First Name <u>Kimling</u>		Middle Initial/Name <u>C</u>									
Last Name <u>Atherley</u>											
Street Address/ PO Box <u>1322 Maple Terrace</u>		Apt or Floor #:									
City <u>Rahway</u>		State <u>NJ</u>	Zip Code <u>07065</u>								
If you are filing on behalf of another, provide the name of that person:		Date of birth:	Relationship:								
<b>2. Regulated Areas:</b> Check the area where the discrimination occurred: (If you wish to file against multiple entities, for example employer and temp agency, please file a separate complaint against each.) <table style="width: 100%; margin-top: 10px;"> <tr> <td><input checked="" type="checkbox"/> Employment (<i>including paid internship</i>)</td> <td><input type="checkbox"/> by a Labor Organization</td> </tr> <tr> <td><input type="checkbox"/> Internship (<i>unpaid</i>)</td> <td><input type="checkbox"/> Apprentice Training</td> </tr> <tr> <td><input type="checkbox"/> Contract Work (<i>independent contractor, or work for a contractor</i>)</td> <td><input type="checkbox"/> by a Temp or Employment Agency</td> </tr> <tr> <td><input type="checkbox"/> Volunteer Position</td> <td><input type="checkbox"/> Licensing</td> </tr> </table>				<input checked="" type="checkbox"/> Employment ( <i>including paid internship</i> )	<input type="checkbox"/> by a Labor Organization	<input type="checkbox"/> Internship ( <i>unpaid</i> )	<input type="checkbox"/> Apprentice Training	<input type="checkbox"/> Contract Work ( <i>independent contractor, or work for a contractor</i> )	<input type="checkbox"/> by a Temp or Employment Agency	<input type="checkbox"/> Volunteer Position	<input type="checkbox"/> Licensing
<input checked="" type="checkbox"/> Employment ( <i>including paid internship</i> )	<input type="checkbox"/> by a Labor Organization										
<input type="checkbox"/> Internship ( <i>unpaid</i> )	<input type="checkbox"/> Apprentice Training										
<input type="checkbox"/> Contract Work ( <i>independent contractor, or work for a contractor</i> )	<input type="checkbox"/> by a Temp or Employment Agency										
<input type="checkbox"/> Volunteer Position	<input type="checkbox"/> Licensing										
<b>3. You are filing a complaint against:</b>											
Employer, Worksite, Agency or Union Name <u>New York City Department of Education</u>											
Street Address/ PO Box <u>65 Court Street</u>											
City <u>Brooklyn</u>		State <u>NY</u>	Zip Code <u>11201</u>								
Telephone Number:											
In what <i>county or borough</i> did the violation take place? <u>New York County</u>											
Individual people who discriminated against you:											
Name: <u>Colin Caldwell</u>		Title: <u>Reassigned Teacher Supervisor</u>									
Name: _____		Title: _____									
If you need more space, please list them on a separate piece of paper.											
<b>4. Date of alleged discrimination (<i>must be within one year of filing</i>):</b>											
The most recent act of discrimination happened on: <u>2</u> <u>2</u> <u>2022</u> month day year											
<b>5. For employment and internships, how many employees does this company have?</b>											
<input type="checkbox"/> 1-14 <input type="checkbox"/> 15-19 <input checked="" type="checkbox"/> 20 or more <input type="checkbox"/> Don't know											

<b>6. Are you currently working for this company?</b>			
<input checked="" type="checkbox"/> Yes. Date of hire:	<div style="display: flex; justify-content: space-between;"> <div> <div style="border-bottom: 1px solid black; width: 40px; text-align: center;">9</div> <div style="text-align: center;">month</div> </div> <div> <div style="border-bottom: 1px solid black; width: 40px; text-align: center;"></div> <div style="text-align: center;">day</div> </div> <div> <div style="border-bottom: 1px solid black; width: 40px; text-align: center;">1996</div> <div style="text-align: center;">year</div> </div> </div>	What is your position? <div style="border-bottom: 1px solid black; padding: 2px 0;">Teacher</div>	
<input type="checkbox"/> No. Last day of work:	<div style="display: flex; justify-content: space-between;"> <div> <div style="border-bottom: 1px solid black; width: 40px; text-align: center;"></div> <div style="text-align: center;">month</div> </div> <div> <div style="border-bottom: 1px solid black; width: 40px; text-align: center;"></div> <div style="text-align: center;">day</div> </div> <div> <div style="border-bottom: 1px solid black; width: 40px; text-align: center;"></div> <div style="text-align: center;">year</div> </div> </div>	What was your position? <div style="border-bottom: 1px solid black; padding: 2px 0;"></div>	
<input type="checkbox"/> I was never hired. Date of application:	<div style="display: flex; justify-content: space-between;"> <div> <div style="border-bottom: 1px solid black; width: 40px; text-align: center;"></div> <div style="text-align: center;">month</div> </div> <div> <div style="border-bottom: 1px solid black; width: 40px; text-align: center;"></div> <div style="text-align: center;">day</div> </div> <div> <div style="border-bottom: 1px solid black; width: 40px; text-align: center;"></div> <div style="text-align: center;">year</div> </div> </div>	What position did you apply for? <div style="border-bottom: 1px solid black; padding: 2px 0;"></div>	

  

<b>7. Basis of alleged discrimination:</b>	
Check <b>ONLY</b> the boxes that you believe were the reasons for discrimination, and fill in specifics only for those reasons. Please look at page 2 of "Instructions" for an explanation of each type of discrimination.	
<input type="checkbox"/> <b>Age:</b> Date of Birth: <div style="border-bottom: 1px solid black; width: 150px;"></div>	<input type="checkbox"/> <b>Familial Status:</b>
<input type="checkbox"/> <b>Arrest Record</b>	<input type="checkbox"/> <b>Military Status:</b> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input type="checkbox"/> Active Duty                     <input type="checkbox"/> Reserves                     <input type="checkbox"/> Veteran                 </div>
<input type="checkbox"/> <b>Conviction Record</b>	<input type="checkbox"/> <b>Marital Status</b> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input type="checkbox"/> Single                     <input type="checkbox"/> Married                     <input type="checkbox"/> Separated                 </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input type="checkbox"/> Divorced                     <input type="checkbox"/> Widowed                 </div>
<input type="checkbox"/> <b>Creed/ Religion:</b> Please specify: <div style="border-bottom: 1px solid black; width: 150px;"></div>	<input type="checkbox"/> <b>National Origin:</b> Please specify: <div style="border-bottom: 1px solid black; width: 150px;"></div>
<input checked="" type="checkbox"/> <b>Disability:</b> Please specify: <u>Asthma and Arthritis</u>	<input type="checkbox"/> <b>Predisposing Genetic Characteristic:</b>
<input type="checkbox"/> <b>Domestic Violence Victim Status</b>	<input type="checkbox"/> <b>Pregnancy-Related Condition:</b> Please specify: <div style="border-bottom: 1px solid black; width: 150px;"></div>
<input type="checkbox"/> <b>Gender Identity or Expression, Including the Status of Being Transgender</b>	<input type="checkbox"/> <b>Sexual Orientation:</b> Please specify: <div style="border-bottom: 1px solid black; width: 150px;"></div>
<input checked="" type="checkbox"/> <b>Race/Color or Ethnicity:</b> Please specify: <u>African American</u>  <input type="checkbox"/> Trait historically associated with race such as hair texture or hairstyle	<input type="checkbox"/> <b>Sex:</b> Please specify: <div style="border-bottom: 1px solid black; width: 150px;"></div> Specify if the discrimination involved: <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input type="checkbox"/> Pregnancy                     <input type="checkbox"/> Sexual Harassment                 </div>
<input type="checkbox"/> <b>Use of Guide Dog, Hearing Dog, or Service Dog</b>	
If you believe you were treated differently after you filed or helped someone file a discrimination complaint, participated as a witness to a discrimination complaint, or opposed or reported discrimination due to any category above, check below:	
<div style="text-align: right; margin-bottom: 5px;">Filed UFT grievance re race February 7, 2020</div> <input checked="" type="checkbox"/> <b>Retaliation:</b> How did you oppose discrimination: <div style="border-bottom: 1px solid black; width: 150px;"></div>	
If you believe you were discriminated against because of your relationship or association with a member or members of a protected category listed above, indicate the relevant category(ies) above, and check below.	
<input type="checkbox"/> <b>Relationship or association</b>	

**Continued: 4. Witnesses** (*information about witnesses may be shared with the parties as necessary for the investigation*) The following people saw or heard the discrimination and can act as witnesses:

Name: Norman

Title: Reassigned teacher at 131 Livingston Street

Telephone Number: (718) 986-3492

Relationship to me:

What did this person witness?

Another African American teacher discriminated against by Colin Caldwell.

**8. Acts of alleged discrimination:** *What did the person/company you are complaining against do? Check all that apply*

<input type="checkbox"/> Refused to hire me	<input checked="" type="checkbox"/> Gave me a disciplinary notice or negative performance review	<input checked="" type="checkbox"/> Denied my request for an accommodation for my disability, or pregnancy-related condition	<input type="checkbox"/> Sexual harassment
<input type="checkbox"/> Fired me/laid me off	<input checked="" type="checkbox"/> Suspended me	<input type="checkbox"/> Denied me an accommodation for domestic violence	<input checked="" type="checkbox"/> Harassed or intimidated me on any basis indicated above
<input type="checkbox"/> Demoted me	<input type="checkbox"/> Did not call back after lay-off	<input type="checkbox"/> Denied me an accommodation for my religious practices	<input type="checkbox"/> Denied services or treated differently by a temp or employment agency
<input type="checkbox"/> Denied me promotion/ pay raise	<input type="checkbox"/> Paid me a lower salary than other co-workers doing the same job	<input type="checkbox"/> Denied me leave time or other benefits	<input type="checkbox"/> Denied a license by a licensing agency
<input type="checkbox"/> Denied me training	<input checked="" type="checkbox"/> Gave me different or worse job duties than other workers doing the same job	<input type="checkbox"/> Discriminatory advertisement or inquiry or job application	<input checked="" type="checkbox"/> Other: Filed 2 sets of OSI complaints



9. Description of alleged discrimination

*Tell us more about each act of discrimination that you experienced. Please include dates, names of people involved, and explain why you think it was discriminatory. TYPE OR PRINT CLEARLY.*

See attached addendum

*If you need more space to write, please continue writing on a separate sheet of paper and attach it to the complaint form. DO NOT WRITE IN THE MARGINS OR ON THE BACK OF THIS FORM.*

**Signature (Declaration or Oath)**

Based on the information contained in this form, I charge the herein named respondent(s) with an unlawful discriminatory practice, in violation of the New York State Human Rights Law.

By filing this complaint, I understand that I am also filing my employment complaint with the United States Equal Employment Opportunity Commission under the Americans With Disabilities Act (covers disability related to employment), Title VII of the Civil Rights Act of 1964, as amended (covers race, color, religion, national origin, sex relating to employment), and/or the Age Discrimination in Employment Act, as amended (covers ages 40 years of age or older in employment). This complaint will protect my rights under federal law.

I hereby authorize the New York State Division of Human Rights to accept this complaint on behalf of the U.S. Equal Employment Opportunity Commission, subject to the statutory limitations contained in the aforementioned law.

I have not filed any other civil action, nor do I have an action pending before any administrative agency, under any state or local law, based upon this same unlawful discriminatory practice. (If you have another action pending and still wish to file, please contact our office to discuss.)

PLEASE INITIAL AA

Human Rights Law § 297.1 requires that a complaint filed with the Division of Human Rights must be "under oath or by declaration." **You must complete either the "declaration" or "oath" sections below.** The declaration requires only your signature and does not need to be notarized. The oath requires that you sign it before a notary.

**DECLARATION**

I affirm this 28<sup>th</sup> day of April (month), 2022 (year) at New York (city), NY (state), under penalties of perjury, that I am the complainant herein; that I have read (or had read to me) the foregoing complaint and know the content thereof; that the same is true of my own knowledge except as to the matters therein stated on information and belief; and that as to those matters, I believe the same to be true.

[Signature]  
[Complainant name]

**OATH**

STATE OF NEW YORK )  
COUNTY OF New York ) SS:

Kimberly Atherley, being duly sworn, deposes and says: that I am the complainant herein; that I have read (or had read to me) the foregoing complaint and knows the content thereof; that the same is true of my own knowledge except as to the matters therein stated on information and belief; and that as to those matters, I believe the same to be true.

[Signature]  
Complainant signature

Subscribed and sworn to  
before me this 28<sup>th</sup> day  
of April, 2022

Rachel Badal  
Signature of Notary Public

RACHEL BADAL  
Notary Public, State of New York  
No. 01BA6087097  
Qualified in Kings County  
Commission Expires Feb. 10, 2023

**Please note: Once this form is completed and returned to the New York State Division of Human Rights, it becomes a legal document and an official complaint with the Division.**

**Additional Information, Page 1:** *This page is for the Division's records and will not be sent to the company or person(s) whom you are filing against.*

**1. Contact information**

**My primary telephone number:** (347) 512-4944

**My secondary telephone number:**

**My date of birth:** 2/18/1969

**(Required) My email address:** katherley69@gmail.com

*The Division uses email, whenever possible, to communicate with the parties to complaints. This avoids delays and lost mail, and increases the efficiency of Division case processing. Therefore, you are required to provide an email address, if you have one, and to keep us advised of any change of your email address. The Division will not use your email address for any non-case related matters.*

Contact person (Someone who does not live with you but will know how to contact you if we cannot reach you)

**Contact person's name:** Antionette Atherley

**Contact person's telephone number:** (347) 721-8421

**Contact person's address:** 230 Quincy Street, Brooklyn, NY 11216

**Contact person's email address:**

**Contact person's relationship to me:** Sister

**2. Special needs:** I am in need of:

- ☐ Interpretation (if so what language?): \_\_\_\_\_
- ☐ Accommodations for a disability: \_\_\_\_\_
- ☐ Privacy. Keep my contact information confidential as I am a victim of domestic violence
- ☐ Other: \_\_\_\_\_

**3. Settlement / Conciliation:** To settle this complaint, I would accept:

*(Explain what you want to happen as a result of this complaint. Do you want a letter of apology, job offer, return to the job, an end to the harassment, compensation, etc.?)*

An end to the discrimination, Colin Caldwell to be removed from his position, emotional distress damages.

**4. Witnesses (information about witnesses may be shared with the parties as necessary for the investigation)** The following people saw or heard the discrimination and can act as witnesses:

Name: Ivy Title: Reassigned teacher at 131 Livingston Street

Telephone Number: 718-502-7627 Relationship to me: \_\_\_\_\_

What did this person witness?

Another African American teacher that Colin Caldwell discriminated against.

Name: Stacy Prispouris Title: Reassigned teacher at 131 Livingston Street

Telephone Number: 718-986-3492 Relationship to me: \_\_\_\_\_

What did this person witness?

A Caucasian teacher originally reassigned to 65 Court Street and asked for an accommodation to report to 131 Livingston Street for health reasons and it was granted. While my request was denied.

**Additional Information, Page Two**

**5. Did you report or complain about the discrimination to someone else?** ☒ Yes ☐ No

**If yes, how exactly did you complain about the discrimination? (To whom did you complain?)**

On February 7, 2020, I complained to the UFT and my Union Rep. Ms. Rivera filed UFT grievance against Colin Caldwell on my behalf.

**Date you reported or complained about discrimination:** 2 7 2020  
month day year

**What happened after you complained?**

Retaliated against by Mr. Colin Caldwell.

**If you did not report the discrimination, please explain why:**

**6. Were other people treated the same as you? How?**

*(For example, people who were harassed by the same manager, disciplined or terminated for the same reasons, did not receive an accommodation for the same reasons, etc.).*

*If you are complaining about discrimination relating to race, national origin, age, religion, etc. please describe their races, national origins, religions, etc.*

Other African American teachers like myself were also reassigned to 65 Court Street, such as Ivy and Norman.

**7. Were other people treated better than you? How?**

*(For example, people who were not fired for doing the same thing you were fired for, people who were doing the same job but making more money, etc.).*

*If you are complaining about discrimination relating to race, national origin, age, religion, etc. please describe their races, national origins, religions, etc.*

Stacy Prispouris a Caucasian teacher reassigned to 65 Court Street was granted a medical accommodation to be reassigned to 131 Livingston Street.

**Addendum to SDHR Complaint against Employer NYCDOE for Kimling Atherley @  
4/27/22**

1. I have been employed as a common branch teacher with the New York City Department of Education (“NYCDOE”) for nearly 25 years, beginning in 1998.
2. I believe I have been the subject of age and race and disability discrimination.
3. I am presently 53 years of age and of the black race. I also suffer from disabilities based on asthma and arthritis.
4. I worked as a teacher at MS 301 in Brooklyn for about 19 years until April 19, 2019, at which point I was served 3020-a charges and was reassigned, until January 7, 2022, when I was returned to my duties at MS 301. At the time of my reassignment, my principal was Acting Principal Troutman and Assistant Principal Hazelwood.
5. I was the UFT chapter leader at the school for approximately 7 years at the time I was reassigned from my duties. During my time as UFT chapter leader, I spoke up for colleagues suffering race discrimination and retaliation on behalf of a Native American teacher and have been retaliated as a result of speaking up on abuse on a student with disabilities and about racial discrimination, and helped file grievances on their behalf.
6. I was initially reassigned to 131 Livingston Street from April 2018 until December 16, 2019, when I was reassigned to 65 Court Street by OPI manager Colin Caldwell. I objected to that assignment based on the need for reasonable accommodations due to my arthritis disabilities. Mr. Caldwell failed to accommodate my disabilities.
7. Prior to being reassigned from MS 301 in 2018, I received reasonable accommodations due to my arthritis.



8. On or about February 7, 2020, I filed a UFT grievance against OPI manager Colin Caldwell for discrimination and retaliation and failing to accommodate my disabilities, when he started docking time from my CAR balance.
9. At the beginning of the COVID-19 pandemic another reassigned teacher and myself both contracted COVID-19 while reassigned to 65 Court Street. I believe that I contracted Covid at 65 Court Street due to poor health and safety conditions at the facility, including poor ventilation.
10. After the COVID-19 pandemic started in March 2020, I called remotely each day and had no issues, until I was told to return to 65 Court Street in Brooklyn in September 2021. I was the only person reassigned back to 65 Court Street, while all other reassigned teachers were allowed to return to 131 Livingston Street.
11. I believe Colin Caldwell has retaliated against me by refusing to reassign me back to 131 Livingston Street after I complained about the health and safety conditions at 65 Court Street. In fact, a Caucasian teacher that was also reassigned to 65 Court Street asked for a reasonable accommodation to be transferred back to 131 Livingston and her request was granted while my request was denied.
12. I received my Section 3020-a decision on January 5, 2022, issuing me a small fine and returning to me my duties at MS 301.
13. I received a disciplinary non file letter from the Superintendent, dated February 2, 2022 and received February 7, 2022, with allegations by OPI Colin Cadlwell that I changed my reassigned location without his permission. The location I had been assigned to was unsafe for health and safety reasons, as I had told him several times, and he did not timely respond

to my complaints about the lack of safety at that location. Four other Caucasian teachers were not assigned to 65 Court Street.

14. On February 3, 2022, I was reassigned back to my teaching duties at MS 301 effective February 6, 2022.
15. On February 14, 2022, I filed a disability and racial discrimination complaint with the NYCDOE's OEO office against DOE OPI manager Colin Caldwell.
16. On April 27, 2022, I received a letter suspending me from my duties effective April 28, 2022.
17. I believe I have been discriminated and retaliated against by OPI manager Colin Caldwell and the DOE based on failure to reasonably accommodate my disabilities and failure to address my safety and health concerns at 65 Court Street, and by retaliating against me for complaining about my disabilities and health and safety concerns not being accommodated, and treating me differently by accommodating similarly situated reassigned Caucasian teachers by allowing them to return to 131 Livingston Street after teachers returned from the pandemic.